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May 12, 1997

BY HAND DELIVERY

Mr. William Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

MAY 13 10 03 AM '97
CABLE SERVICES BUREAU

Re: *Classic Sports Network, Inc. v. Cablevision
Systems Corporation*

Dear Mr. Caton:

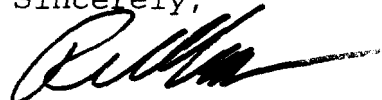
Enclosed please find Classic Sports Network, Inc.'s Reply to Defendant's Answer in the above referenced matter ("Reply").

Pursuant to 47 C.F.R. § 76.1302(h), Classic Sports Network, Inc. is submitting proprietary and confidential information with its Reply. Classic Sports Network, Inc. respectfully requests that the Reply be given full confidential treatment in accordance with 47 C.F.R. § 1302(h).

Classic Sports Network, Inc. is filing a Public Version of its Reply contemporaneously with the confidential version.

If you have any questions please do not hesitate to contact me.

Sincerely,



Robert M. Cooper

enclosures

cc: Howard J. Symons, Esq.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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MAY 12 2 42 PM '97
CABLE SERVICES BUREAU

In the Matter Of)

CLASSIC SPORTS NETWORK, INC.,)

Complainant,)

v.)

CABLEVISION SYSTEMS CORPORATION,)

Defendant.)

File No. _____

COMPLAINANT'S REPLY TO
DEFENDANT'S ANSWER

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Attorneys for Classic Sports
Network, Inc.

Dated: May 12, 1997

SUMMARY

The Answer of defendant Cablevision Systems Corporation ("Cablevision") admits many of the key allegations made by complainant, Classic Sports Network, Inc. ("CSN"). Specifically, Cablevision admits that the parties conducted an extensive series of negotiations during the period 1994-97 in which Cablevision repeatedly insisted on a financial stake in CSN and exclusivity as a precondition to carrying CSN's vintage sports programming service (the "Service"). Moreover, Cablevision often pleads lack of memory, rather than denying CSN's sworn allegations, and has failed to submit any affidavits from its Chairman, its CEO or its Vice Chairman, all of whom were identified in CSN's complaint as key decision makers responsible for Cablevision's improper refusal to grant carriage. Cablevision's admissions (and failures effectively to deny CSN's allegations) buttress CSN's claim that Cablevision used coercive and improper tactics.

Furthermore, Cablevision's claim that it never actually conditioned carriage on the sale of a financial interest is belied by the announcement -- made on the very day CSN filed the Complaint -- that Cablevision plans to launch a competing vintage sports network. Cablevision, which is a leader in live sports programming, badly wanted to become a vintage sports

programmer, demanded that CSN sell to it (which would be the easiest way to enter the market), and announced the launch of its own network only after CSN made it clear that it would not give in to Cablevision's demands.

Cablevision suggests a number of other reasons why it might have declined to carry the Service. The facts simply do not support its claim, however, that these reasons were the basis for Cablevision's refusal in this case. Indeed, most of these theoretical defenses do not even make sense here.

Finally, Cablevision suggests several reasons why Section 616 should not apply here. Cablevision's arguments regarding its alleged small size and the availability of leased access as an alternative means of carriage for CSN, however, are legally irrelevant under Section 616. Moreover, Cablevision's suggestion that the Commission should discourage meritless complaints by denying CSN relief is squarely contrary to Section 616. In fact, this case presents exactly the kind of situation that Section 616 was designed to cover -- and that the Commission discussed when it promulgated its regulations. Failure to take action here would essentially read Section 616 out of the law and give cable operators carte blanche to engage in precisely the type of conduct that Section 616 was intended to eliminate.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

_____)	
In the Matter Of)	
)	
CLASSIC SPORTS NETWORK, INC.,)	
)	
Complainant,)	
)	
v.)	File No. _____
)	
CABLEVISION SYSTEMS CORPORATION,)	
)	
Defendant.)	
_____)	

COMPLAINANT'S REPLY TO
DEFENDANT'S ANSWER

Complainant, Classic Sports Network, Inc.
("CSN"), hereby submits this reply to the Answer of
defendant Cablevision Systems Corporation
("Cablevision") pursuant to Section 1302(e) of the
Commission's rules, 47 C.F.R. § 1302(e).

INTRODUCTION

As set forth in CSN's Complaint, Cablevision
violated Section 616 of the Communications Act, 47
U.S.C. § 536, and Sections 76.1301(a) and (b) of the
Commission's rules by demanding a financial interest in
CSN, as well as exclusive rights, as a precondition to
carrying CSN's vintage sports programming service (the

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"Service"). Cablevision's Answer suggests a number of other reasons why it might have declined to carry the Service, and also claims that Section 616 should not apply in this case. Far from refuting CSN's allegations, however, the Answer confirms that Cablevision has violated Section 616.

Cablevision in fact admits many of CSN's key allegations. Specifically, CSN's complaint detailed an extensive series of discussions between CSN and Cablevision during the period 1994-97 in which Cablevision repeatedly insisted on a financial stake in CSN and exclusivity as a precondition to carrying the Service. Cablevision admits that most of those discussions took place and that it actively sought both an ownership interest in CSN and exclusive rights to its programming. Further, since October 1996, during the period when it most actively was attempting to purchase an interest in CSN, Cablevision did not launch the Service on a single system -- obviously having determined that the prospect of new launches constituted its greatest leverage in attempting to acquire an interest in CSN.

With respect to the allegations that it has not admitted, Cablevision often pleads lack of memory, rather than denying CSN's sworn allegations. In

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addition, while Cablevision criticizes CSN (inaccurately) for failing to submit affidavits attesting to the facts pleaded in its verified Complaint, it fails to submit any affidavits whatsoever from its Chairman (Charles Dolan), its CEO (James Dolan) or its Vice Chairman (Marc Lustgarten) -- the persons who are identified in CSN's Complaint as key decision makers responsible for Cablevision's improper refusal to grant carriage. Cablevision's admissions (and failures effectively to deny CSN's allegations) buttress CSN's claim that Cablevision used coercive and improper tactics in violation of § 616.

Furthermore, Cablevision's claim that it never actually conditioned carriage on the sale of a financial interest is belied by the announcement -- made on the very day CSN filed the Complaint -- that Cablevision plans to launch a competing vintage sports network. Cablevision, which is a leader in live sports programming, badly wanted to become a vintage sports programmer, demanded that CSN sell to it (which would be the easiest way to enter the business), and announced the launch of its own network only after CSN made it clear that it would not give in to Cablevision's demands.

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availability of leased access are legally irrelevant under Section 616. Moreover, Cablevision's suggestion that the Commission should discourage meritless complaints by denying CSN relief is squarely contrary to Section 616. In fact, this case presents exactly the kind of situation that Section 616 was designed to cover -- and that the Commission identified when it promulgated its regulations. Failure to take action here would essentially read Section 616 out of the law and give cable operators such as Cablevision carte blanche to engage in precisely the type of conduct that Section 616 was intended to eliminate.

ARGUMENT

I. CABLEVISION HAS ADMITTED, OR EFFECTIVELY FAILED TO DENY, CSN'S MATERIAL ALLEGATIONS

As discussed in detail in paragraphs 9-44 of CSN's Complaint, CSN executives had an extended series of meetings and telephone calls with Cablevision beginning in 1994. During that period, CSN sought to obtain carriage on Cablevision's systems, and Cablevision repeatedly pressed CSN to sell it a financial interest or to grant it exclusive rights to carry the Service. Although Cablevision's responses to

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these allegations are fraught with inaccuracies,¹ it concedes that such discussions occurred, that CSN sought carriage, and that Cablevision consistently sought a financial interest in CSN and exclusive rights to its programming. For example, Cablevision admits that:

- (1) Josh Sapan, President of Rainbow, "possibl[y]" discussed the purchase of CSN "at some point" in 1994. Answer, p. 10, ¶ 22.²
- (2) Sapan had discussions "on occasion" with Stephen Greenberg, President of CSN, and Brian Bedol, CSN's Chief Executive Officer, about the "possibility" of purchasing CSN. Answer, p. 25, ¶ 11; p. 26, ¶ 12.
- (3) Sapan and Hank Ratner, Executive Vice President of Rainbow, approached Greenberg in September 1996 to discuss the purchase of CSN. Answer, p. 10, ¶ 23; p. 28, ¶ 31.
- (4) Ratner again inquired about buying CSN in October 1996 and was told that CSN was not for sale. Answer, p. 11, ¶ 24.
- (5) Cablevision system operators have expressed interest in carrying the Service. Answer, p. 28, ¶¶ 28, 29.

¹ Rather than discussing every inaccurate or misleading statement contained in Cablevision's Answer in the body of CSN's Reply, CSN is submitting, as Exhibit A hereto, a Supplemental Affidavit of Stephen Greenberg, the President of CSN, setting forth the actual facts. An Affidavit of Brian Bedol, Chief Executive Officer of CSN, is attached as Exhibit B hereto.

² Since Cablevision has two sets of numbered paragraphs in its Answer (¶¶ 1-51 at pp. 1-24 and ¶¶ 1-58 at pp. 24-32), citations to specific portions of the Answer will be made to both page and paragraph numbers.

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- (6) Peter Low, Cablevision's Vice President of Programming, told CSN, in connection with Cablevision's attempt to obtain exclusivity in Connecticut, that "exclusivity is a valuable right" and asked if the carriage of the Service in Connecticut by Southern New England Telephone Co. was "reversible." Answer, p. 30, ¶ 39; p. 31, ¶ 41.
- (7) Low later discussed again Cablevision's desire for exclusivity in Connecticut. Answer, p. 31, ¶ 43.

As these admissions make clear, for a period of over two years -- during which CSN launched the Service, signed affiliation agreements with Cablevision and other major MSOs, and was enthusiastically received in the New York area (and elsewhere) during its temporary run on WBIS -- Cablevision repeatedly attempted to buy CSN and to obtain exclusive rights to carry it. Against this backdrop, Cablevision's failure to provide CSN carriage in the New York market and elsewhere can only be understood as a violation of Section 616.

While these admissions go a long way toward establishing CSN's case, Cablevision's subtle attempts to avoid admitting other allegations are just as telling. For example, Cablevision denies that its CEO, James Dolan, expressed a strong desire to buy CSN.³ Cablevision also denies that in January 1997 --

³ In the words of Josh Sapan, President of Rainbow, James Dolan was "obsessed" with buying CSN. Complaint, p. 13, ¶ 31.

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immediately after CSN made clear that it would not grant Cablevision exclusive rights in Connecticut -- Dolan told Greenberg that negotiations were at an end and that Cablevision would not launch the Service. See Complaint, ¶¶ 33, 44; Answer, pp. 28, 31, ¶¶ 31, 44. Cablevision has elected, however, not to submit an affidavit from Mr. Dolan, even though he clearly played a central role in the relationship between the two companies and even though Cablevision has submitted affidavits from no fewer than seven other executives.⁴ Similarly, Cablevision has not submitted an affidavit from its Vice Chairman, Marc Lustgarten, who told an intermediary that Cablevision would have no incentive to launch the Service if it did not own CSN.⁵ See

⁴ Cablevision also pleads lack of memory with respect to two key telephone calls in which CSN complained to top Cablevision executives, including its Chairman, Charles Dolan, about its failure to carry the Service. Answer, p. 27, ¶¶ 20, 23. Cablevision has also not submitted an affidavit from Charles Dolan.

⁵ Cablevision attempts to make much of CSN's decision not to identify the intermediary -- a decision based solely on concern for his privacy -- and suggests that it does not know who the intermediary is. See Answer p. 29, ¶ 35. As Cablevision well knows, however, that intermediary is Alan Schwartz, a senior investment banker at Bear, Stearns who has worked closely with top executives at Cablevision for years. Indeed, Mr. Schwartz has reported that after CSN's complaint was filed he had a conversation with Cablevision's Chairman, Charles Dolan, who made it clear that he knew Mr. Schwartz was the intermediary referred to in the Complaint.

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Complaint, ¶¶ 35; Answer, pp. 29, ¶¶ 35.

II. CABLEVISION'S ANNOUNCEMENT OF ITS OWN VINTAGE
SPORTS NETWORK FURTHER SUPPORTS CSN'S CLAIM THAT
CARRIAGE WAS CONDITIONED ON A SALE OF CSN

Cablevision devotes much of its Answer to describing the strong interest it has had for many years in becoming a vintage sports programmer. Answer, pp. 9-11, ¶¶ 19-25. Indeed, as noted above, Cablevision concedes that one avenue it explored was to have its programming subsidiary, Rainbow, attempt to buy CSN.⁶ When it became clear that CSN was not for sale, however, Cablevision announced in March of this year that it intends to launch its own vintage sports channel, "American Sports Classics" ("ASC").

We are at a loss to understand why Cablevision spends so much time discussing its longtime interest in buying CSN and its subsequent decision to launch ASC -- since those facts so clearly support CSN's claim that it

⁶ Cablevision asserts that since Rainbow is a programmer and does not make carriage decisions for Cablevision's systems, discussions between CSN and Rainbow executives are not relevant. Answer, pp. 20-21, ¶¶ 42-45. This assertion is without merit. Both the persons who run Rainbow, and the persons who oversee carriage decisions for Cablevision, ultimately report to James and Charles Dolan. There is no legal or logical reason why the Dolans could not have used individuals from both sides of their business to pursue CSN. Cablevision cannot avoid Section 616 simply by funneling its illegal conduct through its programming affiliate.

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has violated Section 616.⁷ There were two ways for Cablevision to pursue its admitted objective of owning a vintage sports programming service: buy CSN or develop its own service. Buying CSN was obviously preferable since this would allow Cablevision to avoid the risks associated with developing its own service and having to compete with CSN.⁸ Cablevision's concessions that it wanted to enter the market, that it tried for two years to do so by buying CSN until it became absolutely clear that CSN was not for sale, and that its desire to enter the market is so strong that it intends to launch its own service even though the Service is already being

⁷ The stated reason for discussing these matters is Cablevision's claim that CSN filed its Complaint in an attempt improperly to interfere with the launch of ASC. Answer, p. 3, ¶ 4; pp. 22-23, ¶¶ 47-49. This claim is baseless. CSN's board approved the filing of the Complaint in February of this year, weeks before the launch of ASC was announced. While CSN was told by representatives of the National Hockey League in late February -- after all negotiations with Cablevision about carriage had ceased -- that Rainbow was asking about licensing hockey footage, CSN knew nothing further until Cablevision publicly announced ASC. Moreover, at Cablevision's request CSN recently provided Cablevision with copies of marketing materials -- something CSN would not have done if it knew Cablevision was about to begin marketing a competing service. Thus, Cablevision's claim that CSN timed the filing of its Complaint to interfere with the announcement of ASC is not factually supportable. In any event, the fact that Cablevision has announced a competing service does not exempt Cablevision from Section 616.

⁸ Indeed, Cablevision's Answer concedes that this is a common practice in the industry. Answer, p. 21, ¶ 44.

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carried extensively by each of the top five MSOs, confirm that Cablevision refused to carry the Service in order to pressure CSN to sell an equity interest to Cablevision.

III. NONE OF CABLEVISION'S SUGGESTED REASONS FOR DENYING COVERAGE IS FACTUALLY SUPPORTABLE

In addition to denying that it conditioned carriage on the sale of CSN or a grant of exclusivity, Cablevision also suggests a number of other possible justifications for its refusal to carry the Service: (1) CSN's rates were too high; (2) the Service's brief run on WBIS made it unattractive; (3) Cablevision lacked sufficient channel capacity to add CSN to its programming lineup; and (4) Cablevision had concerns about the quality of the Service and exercised its editorial judgment not to carry CSN's programming.

In theory, any or all of these reasons might justify the decision of a cable operator not to carry a particular programming service. In this case, however, there is no basis for concluding that any of them underlay Cablevision's refusal to carry the Service. First, Cablevision's factual allegations to support each of these claimed "reasons" are extremely thin. Indeed, we invite the Commission carefully to scrutinize these claims; they contain very few specific factual

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allegations and amount to little more than a litany of the kinds of claims that might be appropriate if there were any facts to support them. Second, none of these claims makes any sense based on the facts in this case.

A. Cablevision Did Not Refuse to Carry
the Service Because CSN's Rates Were
Too High

Cablevision's first claim, that it could have refused to carry the Service because CSN's rates were too high, is a perfect example of Cablevision's inability to plead specific facts supporting its defense. In sharp contrast to CSN's Complaint, which identifies discussions between specific persons, on specific dates, and describes the actual discussions that took place, Cablevision offers virtually no such details. The reason for this lack of specificity is simple: CSN's rates were never an important issue in the discussions between CSN and Cablevision. To the contrary, the parties were in agreement as to the rates for carriage in the New York area; their discussions focused instead on Cablevision's demands for a sale of CSN and for a grant of exclusive rights.

Cablevision's claim that CSN's rates are too high is not factually supportable. Those rates were the result of more than a year of discussions with all of the major cable operators, were established by CSN to

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make the Service competitively priced, and are being paid by virtually every other cable operator that is carrying the Service. The willingness of these other operators to pay CSN's rates belies Cablevision's suggestion that CSN has priced itself too high.

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Cablevision suggests that although the five largest MSOs are carrying the Service and paying CSN's rates, CSN has achieved only limited success with Time Warner and TCI so that Cablevision's failure to carry the Service is not surprising. Answer, pp. 18-19, ¶ 39. This case is not about how CSN has been treated by the other MSOs; it is about Cablevision's conduct. In any event, Cablevision's allegations regarding TCI and Time Warner are just plain wrong. The figures quoted by Cablevision regarding its carriage by TCI and Time Warner are low -- by several orders of magnitude. More importantly for purposes of this case, since October 1996, the date of Cablevision's last launch of the Service, on its small systems in Berea and North

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Olmstead, Ohio,¹⁰ TCI has added the service on 20 additional systems and Time-Warner has added it on 22. Thus, Cablevision's claim that CSN's rates are too high simply does not square with its success in dealing with the other major MSOs.

MATERIAL REDACTED

¹⁰ Cablevision's claim (Answer, p. 30, ¶ 39) that it had simply been "previewing" those systems since last fall but did not actually launch them until last month is utterly false. See Greenberg Supplemental Affidavit at ¶ 8.

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B. Cablevision Did Not Refuse to Carry
the Service Because of its Brief Run
on WBIS

Cablevision suggests that it declined to carry the Service on its New York area systems because it was temporarily broadcast over WBIS and was therefore available at no extra cost to Cablevision's New York subscribers. Answer, pp. 2-3, ¶ 3; p. 14, ¶ 29. Cablevision, however, knew perfectly well that the Service was to be carried on WBIS for only six months and would go off the air in January 1997. CSN expressly informed Cablevision, as well as other cable operators in the New York area, in September 1996 that carriage on

[Footnote continued from previous page]
rate card than the tier's actual penetration rate would otherwise indicate.

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WBIS would end on January 20, 1997.¹² Moreover, discussions between the parties -- including Cablevision's demands for an ownership interest and exclusivity -- were expressly premised upon post-January 20, 1997 launches, i.e., after the Service's run on WBIS had concluded. Since Cablevision knew that the Service would soon be off of WBIS, and since it was still trying to buy CSN, it is disingenuous at best to claim that it declined carriage because it did not want to devote two channels to the Service.

Cablevision's contention that its subscribers would object to paying for the Service since they had received it without charge for six months also makes no sense. To the contrary, the overwhelmingly positive reaction from subscribers who were first exposed to the Service during its run on WBIS demonstrates that there is a strong demand for the Service. In fact, TCI, Time Warner, Comcast and Liberty Cable all indicated to CSN that their customers clamored for the Service during and following its brief run on WBIS and, as a result, each of those carriers launched the Service on at least one

¹² A copy of the letter CSN sent to Cablevision and other cable operators informing them that the Service would be removed from WBIS in January 1997 is attached as Exhibit C.

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additional system in the New York area.¹³ Contrary to Cablevision's claims, the popularity of the Service during its run on WBIS clearly enhanced its value to cable operators, and the assertion that the short-lived broadcast of the Service on WBIS underlay Cablevision's refusal to provide carriage is baseless.¹⁴

C. Cablevision Did Not Refuse to Carry the Service Due to Lack of Channel Capacity or Concerns About the Quality or Desirability of the Service

Cablevision also suggests that it declined to carry the Service, in light of limited channel capacity, due to concerns about the quality of the Service, as well as its view of the best "mix" of available programming. Answer, pp. 5-6, ¶ 10; p. 16-17, ¶ 35. Again, these claims are post hoc attempts to justify Cablevision's refusal to provide carriage; they were never given as the reasons for denying carriage during the extended series of discussions in which Cablevision repeatedly stressed its desire for a financial interest

¹³ An additional launch on a Comcast system in the New York area is scheduled for June 3, 1997.

¹⁴ The claim that cable subscribers will not pay for a sports service they once got for free sounds particularly ironic coming from Cablevision, which pioneered the movement of sporting events from free broadcast television to cable sports channels for which subscribers must pay. In any event, the WBIS episode has no relevance to Cablevision's systems outside the New York area, where CSN has also been denied carriage.

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and exclusivity. Furthermore, as usual, Cablevision has not pleaded any specific facts to support these claims.

In any event, like Cablevision's other purported justifications for denying carriage, these claims just do not make sense. During the parties' discussions Cablevision indicated that it might incorporate the Service into its existing sports channels when live programming was unavailable. Use of the Service on an existing channel, of course, would not raise any question of channel capacity. Moreover, while the supply of channels is not unlimited, Cablevision has had no problem finding room for its own recently introduced programming service, Romance Classics, and it recently announced that it will cancel NewSport to make way for ASC.¹⁵

Cablevision's alleged concern about the quality of CSN's programming is even more suspect. Simply put, if Cablevision did not think CSN provided quality programming, it would not have pushed so hard, for so long, to buy CSN and to acquire exclusive rights to

¹⁵ Cablevision's ability to find room for ASC obviously demonstrates that it is willing to discriminate between its own programming and that of other programmers. Such discrimination, of course, is prohibited under Section 616(a)(3).

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carry it.¹⁶ Moreover, despite its caustic remarks about CSN, the fact is that CSN has programming agreements with the four major sports leagues and ASC apparently does not.¹⁷ In view of Cablevision's ability to find channels for its own programming, its unrelenting pressure to buy CSN, and the limited programming it has apparently been able to acquire for ASC, its purported concern about channel capacity and the quality of the Service is a red herring.

¹⁶ In a slight variation on its "quality" argument, Cablevision argues that cable operators must be allowed to exercise editorial judgment about the appropriate "mix" of programming needed to attract subscribers, implying that it did not consider a vintage sports network as part of that mix. Answer, p. 16, ¶ 35. Section 616, however, does not intrude on an operator's editorial judgment; it simply prohibits using non-editorial factors such as ownership and exclusivity as conditions for carriage. In view of Cablevision's admitted efforts to buy CSN and its announced decision to launch ASC, this claim cannot be taken seriously. To the contrary, it is abundantly clear, especially given Cablevision's longstanding emphasis on sports programming, that vintage sports programming is a key element of its preferred mix of services.

¹⁷ Cablevision attempts to avoid this obvious problem by referring to the Service as being "essentially limited to non-exclusive replays of old games." Answer, p. 6, ¶ 10. This claim is misleading at best. Attached hereto as Exhibit D is a sample CSN program schedule showing the wide variety of programming (other than "old games"). Moreover, CSN has categorical exclusive rights to well over 60% of this material.

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IV. THIS IS AN APPROPRIATE CASE FOR RELIEF
UNDER SECTION 616

Finally, Cablevision suggests three additional reasons why Section 616 should not be applied here: (1) Cablevision serves only a small portion of the country's cable subscribers; (2) CSN could have gained access to Cablevision's subscribers by leasing channel capacity; and (3) granting relief in this case will result in a flood of complaints by disappointed programmers against cable operators who have engaged in aggressive, but legal, bargaining. None of these claims has any merit.

A. Cablevision's Size is No Defense

Cablevision claims that Section 616 should not apply to it here because it serves only 2% of the country's cable subscribers. Answer p. 4, ¶ 7. Cablevision, however, is the country's sixth largest MSO and operates cable systems in 15 states, including key markets in the greater New York area.¹⁸ In any event, there is no authority under either Section 616 or the Commission's regulations for allowing smaller cable

¹⁸ Indeed, in complaining about CSN's rates, Cablevision claimed that CSN should have offered it lower rates to reflect "the opportunity for the programmer to receive more advertising dollars and exposure because of the value of the New York market." Answer, p. 15 n.9. Cablevision cannot simultaneously claim that carriage in the New York market is uniquely valuable to programmers and that CSN was not harmed by its inability to gain access to that market.

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operators to condition carriage on the sale of an interest in the programmer or a grant of exclusive rights. To the contrary, the regulations clearly apply across the board; they provide that "[n]o cable operator" shall require a financial interest or exclusive rights as a condition of carriage. 47 C.F.R. §§ 76.1301(a), (b).

B. The Availability of Leased Access
Is Irrelevant

Cablevision also claims that the Complaint should be dismissed because CSN could have obtained carriage via leased access. Answer, pp. 23-24, ¶¶ 50-51. Cablevision apparently believes that the right to buy access is an acceptable substitute for the ability to sell programming to a cable operator.

If the Commission were to accept this claim, it would read Section 616 out of existence; any programmer who was denied carriage for refusing to accede to a demand to sell itself or grant exclusive rights could simply lease a channel instead. There is simply no basis for Cablevision's claim that the right to leased access (which was enacted as part of the 1984 Cable Act) effectively repeals Section 616 (which was enacted as part of the 1992 Cable Act).¹⁹

¹⁹ Similarly, Cablevision's claim that the existence of
[Footnote continued on next page]